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APPRENTICESHIP AND TRAINING
TRUST FUND

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SOHIL KARIMY,

Plaintiff,

v.

ASSOCIATED GENERAL CONTRACTORS
OF AMERICA – SAN DIEGO CHAPTER,
INC., APPRENTICESHIP & TRAINING
TRUST FUND,

Defendants.

Case No. 08 CV 0297 L (CAB)

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT ASSOCIATED
GENERAL CONTRACTORS OF
AMERICA, SAN DIEGO CHAPTER,
INC. APPRENTICESHIP AND
TRAINING TRUST FUND'S MOTION
TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION
[Fed.R.Civ.P. §12(b)(1)]

Judge M. James Lorenz

Date: June 23, 2008
Time: 10:30 a.m.
Ctrm: 14

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Case No. 08 CV 0297 L (CAB)

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Defendant, Associated General Contractors of America, San Diego Chapter, Inc. Apprenticeship and Training Trust Fund, ("Defendant" or "Trust Fund") respectfully submits the following memorandum of points and authorities in support of its motion to dismiss the claims asserted by Plaintiff, Sohil Karimy, ("Plaintiff" or "Karimy") for lack of subject matter jurisdiction pursuant to Fed.R.Civ.P. 12(b)(1) on the ground that Karimy and the Trust Fund contracted to resolve the disputes set forth in the present action through binding arbitration. Alternatively, Trust Fund brings this motion to dismiss as a "non-enumerated" Rule 12(b) motion to dismiss for failure to exhaust non-judicial remedies. This action is subject to the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA").

I. STATEMENT OF FACTS

A. The Complaint

In his Complaint for Violation of The Civil Rights Act, Title VII, The Fair Labor Standards Act and Related State Claims ("Complaint"), filed on February 14, 2008, Karimy asserts the following alleged claims against the Trust Fund, his former employer:

- (1) Violation of the Civil Rights Act, 42 U.S.C. section 1981, based on the termination of Karimy's employment allegedly because of his ancestry, i.e., Persian. (Complaint §§ 26-33.);
- (2) Intentional employment discrimination in violation of 42 U.S.C. sections 2002e-2 and 2002e-5(f), based on termination of Karimy's employment allegedly because of his ethnicity. (Complaint §§ 34-43.);
- (3) Violation of the Fair Labor Standards Act, 29 U.S.C. section 216(b), based on alleged failure to pay overtime compensation due and owing to Karimy. (Complaint §§ 44-50.);
- (4) Violation of the California Fair Employment and Housing Act, California Government Code sections 12940 and 12965, based on the termination of Karimy's employment allegedly because of his ancestry, i.e., Persian. (Complaint §§ 51-61.);
- (5) Violation of California Labor Code section 510, California IWC Wage Order No. 4-2001, based on alleged failure to pay overtime compensation due and owing to Karimy. (Complaint §§ 62-69.);

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- 1 (6) Waiting time penalties under California Labor Code section 203
2 based on the Trust Fund's alleged failure to pay all wages due and
3 owing upon termination of Karimy's employment with the Trust
4 Fund. (Complaint §§ 70-74.);
- 5 (7) Wrongful discharge in violation of public policy based on the
6 termination of Karimy's employment allegedly in retaliation for
7 Karimy's allegedly engaging in protected activities, i.e., "whistle
8 blowing. (Complaint §§ 75-89.); and
- 9 (8) Unfair business practices in violation of California Business and
10 Professions Code sections 17200 *et seq.* based on the alleged
11 unlawful acts identified in Karimy's first seven claims. (Complaint
12 §§ 90-95.)

13 Karimy's claims arise from his employment with and the termination of his
14 employment by the Trust Fund.

15 **B. The Parties**

16 The Trust Fund is governed by the Employee Retirement Income Security Act of
17 1974, as amended, ("ERISA"), 29 U.S.C. sections 1001 *et seq.*, and applicable laws of
18 the State of California, and is the funding vehicle through which employee benefits are
19 provided in the form of training and education to registered apprentices working in the
20 construction industry on private and public construction projects throughout San Diego
21 County, Orange County, Riverside County, San Bernardino County, and Imperial
22 County. (Declaration of Pete Saucedo in Support of Defendant's Motion to Dismiss
23 ("Saucedo Dec."), ¶ 3.)

24 The apprenticeship and training program ("Training Program") is sponsored by the
25 Associated General Contractors of America, San Diego Chapter, Inc. ("AGC San Diego"),
26 a chapter of the Associated General Contractors of America ("AGC"), located in Arlington,
27 Virginia. (Saucedo Dec. ¶ 6.) The AGC is a national construction trade association,
28 which, in coordination with its local chapters, provides trade association services to
participating employers throughout the United States. The Training Program is funded by
contributions to the Trust Fund from participating employers that are members of AGC
San Diego. The Training Program is designed to meet the needs of contractors in the

1 construction industry that employ and train apprentices on State of California public
2 works, federal Davis-Bacon Act projects and private construction projects. (Saucedo
3 Dec. ¶4.) The Training Program has been approved by the State of California Division of
4 Apprenticeship Standards and the federal Department of Labor Office of Apprenticeship
5 for various trades. (Saucedo Dec. ¶ 5.)

6 The Training Program, funded through the Trust Fund, purchases safety and other
7 materials from AGC as well as national retailers that are manufactured outside of
8 California. (Saucedo Dec. ¶ 7.) In addition, the Training Program, through the Trust
9 Fund, also purchases textbooks utilized in the program from publishers located through
10 the United States. (Saucedo Dec. ¶ 8.) Trust Fund employees, including Karimy, attend
11 conferences, meetings and educational seminars outside of California as part of their
12 employment-related duties and responsibilities. (Saucedo Dec. ¶ 17.) The Trust Fund
13 also uses the instrumentalities of interstate commerce in operating the Training Program.
14 (Saucedo Dec. ¶¶ 9-10.)

15 In April 2003, Karimy became employed by the Trust Fund as coordinator for the
16 Training Program. (Complaint ¶13; Saucedo Dec. ¶11.) As a Training Program
17 coordinator, initially working in Orange County, Karimy's duties included recruiting
18 contractors, recruiting apprentices, overseeing instructors, interacting with apprentices as
19 their advocate, and facility oversight. (Complaint ¶ 14; Saucedo Dec. ¶12.) During 2006,
20 Karimy worked as a Training Program coordinator in San Diego County. (Saucedo Dec.
21 ¶12.) In April 2006, Plaintiff was promoted to director of operations and education for the
22 Training Program. (Saucedo Dec. ¶13.) As director, he primarily was responsible for
23 managing and supervising Training Program coordinators employed by the Trust Fund
24 and developing and coordinating the Training Program curriculum. (Saucedo Dec. ¶13.)
25 Plaintiff's employment with Defendant was terminated on September 17, 2007.
26 (Complaint ¶13; Saucedo Dec. ¶19.)

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1 **C. The Arbitration Agreements**

2 On November 16, 2005, Karimy entered into an At-Will Employment and
3 Arbitration Agreement with the Trust Fund. The Arbitration Agreement provides, in
4 pertinent part:

5 Employee and the Trust Fund agree that in the event Employee's
6 employment is terminated (either by the Trust Fund or the
7 Employee) **any dispute** that may arise between them relating to
8 such termination of employment (including, without limitation, any
9 claim(s) based on common law, any federal or state statute, Title
10 VII of the Civil Rights Act of 1964, as amended, the California Fair
11 Employment and Housing Act, any statute or provision relating to
12 employment discrimination and/or employment rights, the federal or
13 any state constitution and/or any public policy) will be determined
14 by arbitration and not by a lawsuit or resort to court process. . . .
15 **Such arbitration shall be the exclusive forum for any dispute
between Employee and the Trust Fund related to such
termination of employment.** The arbitration of issues relating to
the termination of Employee's employment will be submitted
pursuant to the Trust Fund's employment arbitration rules and
procedures which in effect on the date of termination. The
employment arbitration rules and procedures are available from the
Trust Fund on request, and are incorporated by reference. It is
agreed that the arbitrator's decision will be final and binding on the
Employee and the Trust Fund.

16 (Declaration of David P. Wolds ("Wolds Dec."), ¶ 2, Ex. A, page 2, Section 5, emphasis
17 added).

18 In addition, Section 6 of the Employment Agreement states in bold and capital
19 letters:

20 **NOTICE: BY SIGNING THIS AGREEMENT YOU ARE AGREEING
21 TO HAVE ANY ISSUE CONCERNING THE TERMINATION OF
22 YOUR EMPLOYMENT DECIDED BY NEUTRAL ARBITRATION
AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR
COURT TRIAL.**

23 *Id.* at page 2, Section 6.

24 On or about June 28, 2006, in conjunction with Karimy's promotion to Training
25 Program director of operations and education, Karimy executed a second At-Will
26 Employment and Arbitration Agreement (collectively, "Agreements") containing an
27 identical arbitration provision and notice. (Wolds Dec. ¶ 3.) As part of his duties and
28 responsibilities during this employment with the Trust Fund, Karimy participated in the

1 orientation of new hires, which included presenting identical At-Will Employment and
 2 Arbitration Agreements to newly employed Trust Fund employees and explaining that by
 3 executing such agreements, Trust Fund employees and the Trust Fund were agreeing to
 4 arbitration. (Saucedo Dec. ¶ 14.)

5 **D. Karimy Rejected The Trust Fund's Arbitration Demand**

6 By filing the present action in District Court, Karimy has failed to arbitrate his
 7 disputes with the Trust Fund as required under the Agreements. Prior to filing this
 8 motion to dismiss, the Trust Fund requested that Karimy, consistent with his contractual
 9 obligation, submit his alleged claims to arbitration under the terms of the Agreements.
 10 Karimy, however, has refused to submit his claims to arbitration under the JAMS
 11 Employment and Arbitration Rules and Procedures, as required under the Trust's
 12 Employment Arbitration Rules and Procedures, and incorporated into the Agreements.
 13 (Wolds Dec. ¶¶ 4-6, Exs. C-E.) As discussed below, Karimy is obligated to submit the
 14 present dispute to arbitration, and, as a result, the court is without jurisdiction to
 15 adjudicate Karimy's claims.

16 **II. THE LEGAL STANDARD**

17 **A. Fed.R.Civ.Proc.12(b)(1) Standard**

18 Where parties are bound to arbitrate a dispute, courts lack subject matter
 19 jurisdiction over the dispute and may dismiss the action. The FAA empowers courts to
 20 stay actions subject to contractual arbitration, or alternatively, to dismiss such actions for
 21 lack of subject matter jurisdiction. *Bosinger v. Phillips Plastic Corp.* 57 F.Supp.2d 986,
 22 989 (S.D.Cal 1999), *citing Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir.
 23 1988) (*sua sponte* dismissal of claims subject to arbitration). District Courts have
 24 properly dismissed actions subject to federal arbitration under Fed.R.Civ.P. 12(b)(6) and
 25 Fed.R.Civ.P. 12(b)(1). *Thinket Ink Information Resources, Inc. v. Sun Microsystems,*
 26 *Inc.*, 368 F.3d 1053, 1060 (9th Cir. 2004) (the District Court did not err in dismissing
 27 claims under Fed.R.Civ.P. 12(b)(6)); and *Filimex LLC v. Novoa Investments, LLC*, 2006
 28

1 WL 2091661, *2 (D. Ariz. 2006) (Rule 12(b)(1) is a flexible rule and vehicle for dismissal
2 for failure to exhaust administrative remedies).

3 Alternatively, the courts have held that a failure to exhaust non-judicial remedies
4 is a “matter in abatement” and such failure is properly raised in a motion to dismiss as a
5 “non-enumerated” Rule 12(b) motion. *Inlandboatmens Union of the Pacific v. Dutra*
6 *Group*, 279 F.3d 1075, 1078 (9th Cir. 2002), *citing Ritza v. International Longshoremen’s*
7 *and Warehousemen’s Union*, 837 F.2d 365, 368-69 (9th Cir. 1988). “Non-enumerated”
8 Rule 12(b) motions are governed by general motion provisions under the Federal Rules
9 of Civil Procedure, which permit hearing motions based on facts outside the pleadings.
10 *Ritza*, 837 F.2d 3 at 369. Here, the Trust Fund brings its motion to dismiss for Karimy’s
11 failure to exhaust his non-judicial remedies in arbitration as a Fed.R.Civ.P. 12(b)(1)
12 motion or, in the alternative, as a “non-enumerated” Rule 12(b) motion to dismiss.

13 In ruling on a Rule 12(b)(1) motion to dismiss, the court is not limited to the
14 allegations of the pleadings, but may review any evidence, including declarations and
15 witness testimony, to resolve factual disputes regarding jurisdiction. *McCarthy v. United*
16 *States*, 850 F.2d 558, 560 (9th Cir. 1988); *Impress Communications v. UnumProvident*
17 *Corp.*, 335 F.Supp.2d 1053 (C.D.Cal. 2003), *citing Ward v. Internal Revenue Serv.* 2002
18 WL 1988186 at *1 (C.D.Cal. June 19, 2002)). The plaintiff has the burden of
19 establishing the court’s subject matter jurisdiction, and the court presumes lack of
20 jurisdiction until the plaintiff demonstrates otherwise. *Kokkonen v. Guardian Life Ins.*
21 *Co.*, 511 U.S. 375, 377 (1994); *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221,
22 1225 (9th Cir. 1989).

23 **B. Fed.R.Civ.P 12(b)(1) Motion to Dismiss Under The FAA**

24 Under the FAA, “an agreement in writing to submit to arbitration an existing
25 controversy arising out of such a contract, transaction, or refusal, shall be valid,
26 irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the
27 revocation of any contract.” 9 U.S.C. § 2. Applying the FAA, courts are required to issue
28

1 an order compelling arbitration of disputes where the parties have agreed to arbitrate but
 2 have failed to comply with such obligation. 9 U.S. C. §§ 3, 4. Where, as here, the
 3 disputes pleaded in the complaint must be arbitrated, dismissal of the action is
 4 appropriate. See e.g., *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir.
 5 1988); *Bosinger v. Phillips Plastics Corp.* 57 F.Supp.2d 986, 989 (S.D.Cal. 1999), citing
 6 *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992).

7 Federal law governs whether a particular matter is arbitrable under the parties'
 8 agreement. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 402-405
 9 (1967); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc.* 473 U.S. 614, 626
 10 (1985). When asked to dismiss an action in favor of binding arbitration, a court must first
 11 determine whether the parties agreed to arbitrate the dispute. The Court's only role when
 12 presented with a question of arbitrability is to determine (i) whether an arbitration
 13 agreement exists; and (ii) whether the scope of the parties' dispute falls within the scope
 14 of the arbitration provision. *Filimex, L.L.C. v. Novoa Investments, L.L.C.* 2006 W.L.
 15 2091661, *3 (D.Ariz. 2006), citing *Chiron Corp. v. Ortho Diagnostic Sys., Inc.* 207 F.3d
 16 1126, 1130 (9th Cir. 2000). Federal courts must order parties to proceed to arbitration if
 17 there has been a "failure, neglect, or refusal" to honor an agreement to arbitrate. See 9
 18 U.S.C. § 4. "As a matter of federal law, any doubts concerning the scope of arbitrable
 19 issues should be resolved in favor of arbitration, whether the problem at hand is the
 20 construction of the contract language itself or an allegation of waiver, delay, or the like
 21 defense to arbitrability." *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460
 22 U.S. 1, 24-25 (1983); *Mitsubishi, supra*, 473 U.S. at 626.

23 III. ARGUMENT

24 A. Arbitrability Is Governed By The FAA

25 Section 2 of the FAA, 9 U.S.C. section 2, provides as follows:

26 A written provision in any maritime transaction or a contract
 27 evidencing a transaction involving commerce to settle by arbitration
 28 any controversy thereafter arising out of such contract or
 transaction, or the refusal to perform the whole or any part thereof,

1 or an agreement in writing to submit to arbitration an existing
 2 controversy arising out of such a contract, transaction, or refusal
 3 shall be valid, irrevocable, and enforceable, save upon such
 4 grounds as exist at law or in equity for the revocation of any
 5 contract.

6 The FAA applies to employment contracts, including at-will employment contracts.
 7 *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 299 (2002) (Employment contracts, except
 8 for those covering workers engaged in transportation, are covered by the FAA).
 9 Moreover, a wide variety of statutory claims, including those alleged in the present action
 10 are subject to contractual arbitration. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105,
 11 110 (2001) (claims arising under California's Fair Employment and Housing Act are
 12 subject to arbitration); *EEOC v. Luce, Forward, Hamilton & Scripps*, 345 F.3d 742, 748
 13 (9th Cir. 2003) (Title VII does not bar compulsory arbitration agreements); *Adkins v.*
 14 *Labor Ready, Inc.*, 303 F.3d 496, 505 (4th Cir. 2002) (no conflict between FLSA and
 15 FAA).

16 The reach of the FAA coincides with the breadth of the Commerce Clause to the
 17 United States Constitution and applies "not only to the actual physical interstate
 18 shipment of goods but also to contracts relating to interstate commerce. *Allied-Bruce*
 19 *Terminex Cos., Inc. v. Dobson*, 513 U.S. 265, 277 (1995). The parties need not have
 20 intended interstate activity when they entered in their agreement. *Id.* In *Allied-Bruce*,
 21 the Court concluded that a termite-protection contract involved interstate commerce
 22 because, among other things, the termite-treating and house-repairing materials used by
 23 the defendant came from outside the state where the dispute arose. *Id.* at 282.

24 Here, the Training Program, on behalf of the Trust Fund, purchases materials
 25 used in education and training from outside California, and uses the U.S. Postal system
 26 as well as other instrumentalities of interstate commerce in its business, such as
 27 telephone services, facsimile machines, and the Internet to communicate with out-of-
 28 state customers, vendors, other AGC chapters and the AGC national office. The costs of
 materials purchases from out-of-state vendors exceed \$50,000. For example, the Trust

1 Fund purchases safety and other materials from AGC, a national construction trade
 2 association located in Arlington, Virginia. (Saucedo Dec. ¶6.) In addition, the Trust
 3 Fund purchases text books from publishers located throughout the United States.
 4 (Saucedo Dec. ¶7.) The Trust Fund also purchases commercial tools from national
 5 retailers, such as Prexair, Inc., whose worldwide headquarters are located in Danbury,
 6 Connecticut. (Saucedo Dec. ¶9.) The Trust Fund advertises its Training Program and
 7 services on the World Wide Web and utilizes U.S. Postal Service, facsimile machines
 8 and the Internet to communicate with individuals and entities outside California.
 9 (Saucedo Dec. ¶10.)

10 Furthermore, while employed by the Trust Fund, Karimy was involved in
 11 transactions and activities involving interstate commerce. As director of the Training
 12 Program, Karimy purchased textbooks from publishers located throughout the United
 13 States and commercial tools for the Training Program from national retailers. (Saucedo
 14 Dec. ¶¶ 15, 16.) Many such commercial tools were manufactured outside of California.
 15 For example, Karimy purchased Skill brand saws that are manufactured in the state of
 16 Illinois. (Saucedo Dec. ¶16.) Employees of the Trust Fund employees of the Trust Fund
 17 attend conferences, meetings, and educational seminars outside California. (Saucedo
 18 Dec. ¶17.) In July 2006, Karimy attended a Western Conference Training Directors
 19 meeting in Alaska, and, in July 2007, Karimy attended a meeting in Wyoming, which
 20 included individuals from AGC chapters in 15 states. (Saucedo Dec. ¶¶ 17-18.) The
 21 Agreements evidence transactions involving interstate commerce, and, as a result, the
 22 FAA applies to this case.

23 **B. The Disputes Raised In The Complaint Are Subject To Arbitration**

24 The FAA embodies a strong federal policy promoting arbitration. *Moses H. Cone*
 25 *Mem. Hosp., supra*, 460 U.S., at 24. Consistent with the strong and liberal federal policy
 26 favoring arbitration agreements, courts construing arbitration agreements must broadly
 27 construe them and must resolve any ambiguities in an arbitration clause and any doubts
 28 concerning the scope of arbitrable issues in favor of arbitration. *Moses, supra*, 460 U.S.

1 at 24-25.

2 The Ninth Circuit Court holds that the contractual arbitration provisions must be
3 construed liberally. *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 720 (9th Cir. 1999). A
4 plaintiff's factual allegations need only "touch matters" covered by the contract containing
5 the arbitration provision. *Id.*, see also *Bosinger v. Phillips Plastics Corp.* 57 F.Supp.2d
6 986, 993-994 (S.D.Cal. 1999) ("arising out of" broad enough to encompass related tort
7 claims). Similarly, other courts analyzing contractual language regarding "any disputes,"
8 have interpreted arbitration provisions broadly, holding that disputes with a significant
9 relationship to the contract are arbitrable. *Ryan & Sons, Inc. v. Rhone Poulenc Textile,*
10 *S.A.*, 863 F.2d 315, 321 (4th Cir.1988); *Genesco, Inc. v. T. Kakiuchi & Co.*, 815 F.2d
11 840, 846 (2d Cir.1987) (any claims concerning the parties' loan agreement obligations
12 should be arbitrated); *Blinco v. Green Tree Servicing, LLC*, 400 F.3d 1308, 1312 (11th
13 Cir.2005); see also *Hornbeck Offshore Corp. v. Coastal Carriers Corp.*, 981 F.2d 752,
14 755 (5th Cir.1993).

15 The Agreements executed by Karimy require that he submit to arbitration "**any**
16 **dispute**" that may arise between Karimy and the Trust Fund related to the termination of
17 his employment, including statutory, contract, and common law claims. The binding
18 arbitration provisions in Sections 5 and 6 of the Agreements are both clear and broad in
19 scope. Karimy was aware of the provisions and understood their significance. Karimy
20 executed the Agreements twice during his employment with the Trust Fund. As part of
21 his duties and responsibilities as director, he reviewed the employee handbook, which
22 references the Agreement, and discussed Trust Fund policies and procedures as well as
23 the At-Will Employment and Arbitration Agreement with newly hired employees.

24 On February 14, 2008, Karimy filed the present action alleging that, his
25 employment was terminated because of discrimination based on his protected status in
26 violation of state and federal anti-discrimination laws. Karimy further alleges that he
27 suffered a retaliatory termination of his employment in violation of public policy following
28 his engaging in protected "whistle blowing." Karimy also alleges that the Trust Fund failed

1 to compensate him with overtime premiums during his employment and failed to
 2 compensate him with all wages due and owing upon termination of employment.
 3 Karimy's claims fall squarely within the scope of the arbitration agreement. Accordingly,
 4 an arbitrable controversy exists between the parties.

5 Any doubt as to whether a particular dispute falls within the arbitration clause is
 6 generally resolved in favor of arbitration. *AT&T Technologies, Inc. v. Communications*
 7 *Workers of America*, 475 U.S. 643, 650 (1986). "[A]rbitration should not be denied
 8 'unless it may be said with positive assurance that the arbitration clause is not
 9 susceptible of an interpretation that covers the asserted dispute.'" *Homestake Lead Co.*
 10 *of Missouri v. Doe Run Resources Corp.*, 282 F.Supp.2d 1131, 1141 (N.D.Cal. 2003),
 11 *citing USA v. Warrior & Gulf*, 363 U.S. 574, (1960); *IBEW, Local No. 4 v. KTVI-TV, Inc.*,
 12 985 F.2d 415, 416 (8th Cir.1993). Here, the scope of the arbitration provision in the
 13 Agreements under which he was employed by the Trust Fund is sufficiently broad to
 14 encompass all employment-related claims alleged in the Complaint. The Agreements
 15 executed by Karimy bar Karimy's judicial action, because the court lacks subject matter
 16 jurisdiction over his claims. As a result, Karimy must assert his alleged claims through
 17 arbitration.

18 IV. CONCLUSION

19 Based on the foregoing, the Trust Fund respectfully requests that the court grant
 20 its motion to dismiss the Complaint with prejudice.

21 DATED: March 28, 2008

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